



**DRAFT MINUTES**

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
REGULAR MEETING**

**11:00 a.m., Thursday, July 19, 2012  
Police and Fire Department Headquarters—Arizona Room  
8401 E. Indian School Road  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
Jeffrey Burg, Citizen Member  
James Butera, Elected Member  
Velicia McMillan, Citizen Member/Merit Head

**ABSENT:** Jeffrey Walther, Elected Member

**STAFF:** Ken Nemec  
Chanda Washington

**OTHERS:** Mike Anthony, Esq.  
Hannah Auckland, Esq.  
Joel Friedman, Esq.  
Police Officer James H. Powers  
Julianne Powers

**[City of Scottsdale Fire Local Board and Police Local Board combined meetings occurred from 11:16 a.m. to 11:50 a.m.]**

**9. Discussion of recently enacted legislation and corresponding effect on benefits provided by PSPRS**

Ms. Auckland presented copies of a July 19, 2012 Memorandum re: 2012 Summary of Legislative Changes to the PSPRS Statutes. She stated that some of the statute changes occurred as a result of unusual situations that have never been considered by the Board of Trustees.

Ms. Auckland reported that these 2012 legislative statutory changes become effective August 2, 2012 unless otherwise stated. She elaborated that there were four PSPRS Bills, noting that she did not address Senate Bill 1115 dealing with loan guarantees.

Ms. Auckland explained that in Senate Bill 1116 the first PSPRS provision changed was A.R.S. § 38-843.05 relating to any retired member returning to work. She stated that starting last year employers who rehired retired members were required to pay an alternate contribution rate into the System.

Chairman Cross invited the Police Local Board members to join the Fire Local Board meeting in order to eliminate the need to repeat the PSPRS legislative changes and disability retirement effective date discussions. Board Member Butera joined the combined meeting at this time.

Ms. Auckland explained that A.R.S. § 38-846 explains what to do with accumulated contributions in the System upon the death of the last designated beneficiary.

She summarized that A.R.S. § 38-847 details the authority of the Local Boards clarifying that they are not required to provide a rehearing to a claimant or the Board of Trustees if doing so would be contrary to other applicable laws. She stated that the Local Boards are also required to submit all documents submitted for any actions taken including medical board and IME reports.

Ms. Auckland said that A.R.S. § 38-849 relates to limitations on receiving pensions such as severance refunds, the reinstatement of service credits, and the reemployment of retired or disabled members.

She stated that A.R.S. § 38-853 removes the requirement that a PSPRS member initiate the transfer of credited service between employers within two years.

Mr. Anthony explained that firefighters routinely retire and then become fire marshals, which creates a controversy regarding whether they can be a member of the PSPRS as it relates to the 2007 IRS code.

Ms. Auckland stated that A.R.S. § 38-853.01 sets the amount of the discount rate used by the actuary for the redemption calculation.

She summarized that A.R.S. § 38-859 relates to a new provision that the Local Board's medical board was to be used to determine the proximate cause of death for a member killed in the line of duty if the death occurs more than one year after the date of injury for purposes of determining death benefits.

Mr. Anthony recalled a previous Scottsdale case where a police officer who fell down a flight of stairs and injured his back received an accidental disability pension and then died at home almost five years later.

Ms. Auckland stated that A.R.S. § 38-860 requires that a domestic relations order submitted to the PSPRS must be issued by a U.S. court in order to be deemed plan approved.

She explained that HB 2409 clarifies the interest payments for members who enter the DROP before January 1, 2012 as well as members who enter the DROP after January 1, 2012.

Ms. Auckland reported that A.R.S. § 38-844.08 refers to the payment of DROP benefits received during a member's simultaneous termination of DROP and employment.

She stated that A.R.S. § 38-853.01 revises the requirement for purchasing credited services, noting that A.R.S. § 38-853.02 establishes that members who purchase service credits shall make payments to the System in lump sum payments through installment payment or through appropriate rollovers.

Ms. Auckland summarized that HB 2745 amends PSPRS statute A.R.S. § 38-843.05 which references the contribution rate paid by employers who hire retired PSPRS members who are later rehired.

She explained that although HB 2643 was not a PSPRS statute it does apply to PSPRS and CORP members and establishes a supplemental benefits plan for employees injured on duty.

In response to Board Member Springborn's inquiry regarding any ongoing lawsuits with the PSPRS regarding the contribution rate, Ms. Auckland stated that she had heard that those lawsuits existed.

Ms. Auckland explained that there was a recent ASRS case where the court determined that it was incorrect for an employer to contribute 47% and an employee to contribute 53%. She recalled that there were also a couple lawsuits addressing situations where the COLA was taken away from retirees.

## **10. Discussion of effective date of PSPRS disability retirements**

Ms. Washington recalled that in the past when the Board approved disability retirements staff had set the effective date as the first day of the month following the Board's approval of the application.

During the processing of Dart Craytor's application, staff found out that they should be setting the effective date as the first day of the month following the applicant's submission of their application and the date they terminated employment.

In response to Ms. Auckland's inquiry regarding when Fire Captain Curley's employment ended with the City of Scottsdale, Ms. Washington stated that it was March or April of 2012. Mr. Craytor's termination occurred in March 2012.

Chairman Cross pointed out that the statute requires that benefits begin the first day of the month in which one retires, which is the month one terminated employment.

Ms. Auckland summarized that the statute states the following:

"The payment of an accidental catastrophic or ordinary disability pension shall commence as of the first day of the month following the date of retirement or the expiration of a period during which the members receive sick leave."

She explained that staff was informed by the Board of Trustees that the Local Board was supposed to designate the date when the payment was to begin.

Ms. Auckland recommended that the Board add language to their standard approval motion stating "pursuant to statute, the member's pension shall commence as of the first day of the month following the date of retirement."

Ms. Washington reported that Public Safety also added a new statute restricting staff from making payments retroactive 90 days relating to Fire Local Board applications. Ms. Auckland explained that A.R.S. § 35-85.02 titled "Payment of a Pension" states:

"The Board shall not make a retroactive payment of a pension to a person that is more than 90 days before the date of the person's application for benefits."

She stated that since the statute refers to a person rather than a member it may relate to the guardian's benefits.

Ms. Auckland suggested that staff go back to the retirement dates specific to these disability applications unless the Board of Trustees disagrees.

Chairman Cross recalled that the 2010 A.R.S. § 38-842 definition of retirement states:

"Retirement or retired means termination of employment after a member has fulfilled all requirements for a pension. Retirement shall be considered as commencing on the first day of the month immediately following the member's last day of employment or authorized leave of absence if later."

He elaborated that the date of termination was also considered the date of retirement, noting that the checks should begin the first day of the following month.

Discussion ensued regarding whether the Fire Board must reconsider the four accidental disability cases plus the survivor benefit case recently approved instead of resubmitting the corrected paper work.

Ms. Washington explained that staff could work with Public Safety on the best way to address this matter, noting that they have a report that contains information on members who were disabled, with their effective dates.

**Following adjournment of the Fire Local Board of the PSPRS meeting, Chairman Cross called a break 11:50 a.m. to 11:54 a.m.]**

### **Call to order**

Chairman Cross reconvened the meeting at 11:54 a.m. He stated that the first order of business was the acknowledgement of Board Member Walther's excused absence.

Chairman Cross reminded the Board that agenda items 9 and 10 had already been discussed during the prior combined meeting with the City of Scottsdale Fire Local Board. He recommended that the Board continue with agenda item 7 so that Police Officer James H. Powers and his attorney Joel Friedman were not delayed any longer than necessary.

### **Roll call**

A formal roll call confirmed the members present as stated above.

### **Possible Executive Session**

Executive Session may occur at any time during this meeting.

#### **7. Discussion and vote on the Ordinary Disability Retirement application of Police Officer James H. Powers**

Chairman Cross summarized that the medical report of the IME physician Dr. Reiser confirmed the following:

- Question 1: The Applicant can no longer do his job.
- Question 2: The Applicant was incapable of completing the duties of his job classification.
- Question 3: The Applicant's injury was not job related.
- Question 4: The Applicant's injury does not appear to be a pre-existing condition.

Ms. Washington confirmed that the Applicant's paperwork was in order.

Mr. Anthony suggested that Police Officer Powers be given an opportunity to present any comments. Police Officer Powers had nothing further to say at this time.

Mr. Friedman explained that although they still had some concerns regarding Dr. Reiser's answer to question 3, they were in agreement with Chairman Cross' interpretation of the doctor's report.

Mr. Nemec inquired whether effective date should be included in the standard motion on all disability retirement applications as previously discussed.

Chairman Cross explained that an Applicant's retirement should be effective as of their last day of employment, and their pension should begin the first day of the month following the Applicant's last day of employment.

In response to Chairman Cross' inquiry regarding whether Police Officer Powers' termination occurred in October 2011, Police Officer Powers confirmed that his last day of employment with the City of Scottsdale was the last day of October 2011.

**BOARD MEMBER BUTERA MOVED TO APPROVE THE ORDINARY DISABILITY RETIREMENT PENSION OF POLICE OFFICER JAMES H. POWERS, SINCE HE DOES MEET THE STATUTORY REQUIREMENTS, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

Chairman Cross commented that there is still a possibility that Police Officer Powers' application may go to the State Board for review in the future. He expressed the Board's appreciation of the Applicant's many years of service to the citizens of the City of Scottsdale.

**1. Review and approval of meeting minutes—June 21, 2012**

**BOARD MEMBER BURG MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE JUNE 21, 2012 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

**2. Review and approval of executive session meeting minutes—June 21, 2012**

**BOARD MEMBER BUTERA MOVED TO APPROVE THE EXECUTIVE SESSION MEETING MINUTES OF THE JUNE 21, 2012 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

**3. Review and approval of January 25, 2012 Board meeting minutes that have been amended to accurately reflect the Board's vote on item number 1**

**BOARD MEMBER MCMILLAN MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE JANUARY 25, 2012 PSPRS POLICE LOCAL BOARD MEETING AS AMENDED. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

**4. Induction of new Scottsdale police officers into PSPRS**

Mr. Nemec reported that six police officers were hired in January and February of 2012 having a PSPRS induction date of July 19, 2012. He stated that five of the police officers have an academy graduation date of June 22, 2012. Mr. Nemec pointed out that Dustin Friesth's academy graduation date was July 13, 2012, noting that he is the only police officer who has a pre-existing condition.

**BOARD MEMBER BURG MOVED TO APPROVE THE INDUCTION OF NEW SCOTTSDALE POLICE OFFICERS (SEAN RYAN, MICHAEL LANOUAR, JOSHUA**

**HAMM, THOMAS DELASH AND ZACK FIELDING) INTO PSPRS EACH WITH AN EFFECTIVE DATE OF JUNE 22, 2012. (DUSTIN FRIESTH) INTO PSPRS WITH AN EFFECTIVE DATE OF JULY 13, 2012 AND WITH PRE-EXISTING CONDITIONS, IF ANY, AS NOTED ON THE ATTACHED LISTING. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

**5. Discussion and vote on the DROP (Deferred Retirement Option Plan) application of Police Lieutenant Jaime Buckler**

Mr. Nemec reported that Police Lieutenant Jaime Buckler applied for the DROP on July 31, 2012 with 25.1 years of service, noting that his paperwork was in order.

**BOARD MEMBER BUTERA MOVED TO APPROVE THE DROP (DEFERRED RETIREMENT OPTION PLAN) APPLICATION OF POLICE LIEUTENANT JAIME BUCKLER EFFECTIVE JULY 31, 2012 SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

**6. Discussion and vote on the DROP (Deferred Retirement Option Plan) termination and normal retirement application of Police Officer Andrew A. Marshall**

Ms. Washington reported that Police Officer Andrew A. Marshall's expected date of retirement from the DROP was August 30, 2012, noting that the pension check associated with his application was \$4,519.54. She recalled that the Applicant entered the DROP with approximately 25.06 years of service.

Chairman Cross expressed the Board's appreciation of Police Officer Marshall's 30 years of service to the citizens of Scottsdale.

**BOARD MEMBER BUTERA MOVED TO ACCEPT THE DROP TERMINATION REQUEST OF POLICE OFFICER ANDREW A. MARSHALL AND TO APPROVE HIS NORMAL APPLICATION, EFFECTIVE AUGUST 30, 2012, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. THE MONTHLY PENSION ASSOCIATED WITH THIS APPLICATION IS \$4,519.54 TO BEGIN ON OR ABOUT SEPTEMBER 30, 2012. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER WALTHER WAS ABSENT.**

**8. Discussion and vote on the Accidental Disability Retirement application of Police Officer John Herrick**

Ms. Washington explained that Police Officer John Herrick requested additional time to review the IME physician's report which was received by staff late yesterday.

Chairman Cross recommended that agenda item 8 be tabled until next month's meeting.

**11. Report to the Board on recently completed transfers of prior service credits**

Chairman Cross announced that there were no recently completed transfers to discuss at this time.

**12. Board suggestions for upcoming agenda items**

Chairman Cross confirmed that there were no suggestions for upcoming agenda items.

**ADJOURNMENT:**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 12:05 p.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Police Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee